

Summary of the Proposed Regulation Changes

Regulations are Needed to Implement Four New Statutes. The statutes were passed in 1997, 1998, and 1999.

Maintaining Public Access and Use, AS 38.04.058 and AS 38.05.200. In 1997, the legislature revised a statute to require a written finding before DNR restricts access to protect public safety or property. (AS 38.04.058). Also, it prohibited DNR from restricting how people have traditionally used a route for sport and subsistence hunting, fishing, recreation, etc., unless the restriction is small in extent or temporary, protects public safety and public or private property, or is for natural resource development and reasonable alternative access is available (AS 38.04.200).

RS 2477 Rights-of-Way, AS 19.30.400-420. In 1998, the legislature enacted a new statute on RS 2477 rights-of-way. RS 2477 was a law Congress passed in 1866 allowing public officials or the general public to obtain road rights-of-way on unreserved federal land. That federal law was repealed in 1976, but the rights-of-way it created are still in effect. The new state law lists 602 routes believed to qualify as RS 2477 rights-of-way; requires that DNR research and report to the legislature annually regarding additional routes it has identified; and creates standards for vacating (canceling) RS 2477 rights-of-way (AS 19.30.400 - 420).

Platting Authority in the Unorganized Borough, AS 40.15.300 – 380. In 1998, the legislature designated DNR as the platting authority in the unorganized borough and within municipalities that do not have their own platting authority. The platting authority is responsible for reviewing and approving subdivision plats, but the new law also affects right-of-way acquisition plats and plat vacations.

Vacation of RS 2477 Rights-of-Way, AS 29.35.090. In 1999 the legislature changed the law to prohibit municipalities from vacating a RS 2477 right-of-way within their borders. Only state agencies or the Legislature can do so.

Other Changes. In addition to dealing with the new laws noted above, the proposed regulation changes set out some long-standing DNR practices that have not previously been put in writing. They also group all of DNR's regulations on public access easements into one chapter, which should make them easier to find. (Currently some of those regulations are in 11 AAC 53, a survey chapter, while others are in 11 AAC 51.) Below are some of the most important modifications.

Eliminating RS 2477 easement "certifications." "Certification" will no longer be part of the process for identifying historic routes that qualify as rights-of-way under RS 2477. DNR used a certification process before there was any state law on these historic routes. As noted above, the legislature provided state law on the subject in 1998 when AS 19.30.400 - 420 were passed. Certification was slow and costly. Of the 602 routes now listed in AS 19.30.400 as RS 2477 rights-of-way, only 12 were ever certified during the seven years that the certification process existed. The new law simply requires DNR to research historic routes and report them annually to the Legislature, without calling for any administrative certification. However, before each annual report, DNR will give public notice and the opportunity for anyone to comment who has evidence confirming or challenging DNR's research. See the proposed 11 AAC 51.055.

Changing an easement. The proposed 11 AAC 51.065 provides standards that must be met before an easement can be vacated or rerouted. This section is needed to carry out AS 19.30.410, which applies specifically to RS 2477 rights-of-way, and AS 38.04.058 and 38.04.200, applicable to public access restrictions in general. DNR's long-standing practice has been to allow an easement vacation only if "equal or better" access is available by some other route, but this standard has never been set out in regulation before. The new regulation also calls for the platting authority to comply with applicable law on plat changes (including local notice and a hearing) before the easement vacation request is brought to DNR.

Section-line easement widths. The law on section-line easement widths has changed many times since the Territorial Legislature passed it in 1923. Proposed 11 AAC 51.025 makes it easier to determine whether that law applies to a particular parcel of land. Also, the regulation interprets the law's term "other land" to mean land that was once unreserved federal land open to RS 2477.

Managing easements. Many uses of state-owned land or interests in land (this term includes a state-owned easement, even if it crosses someone else's land) do not require any DNR permit. However, if a permit application is filed to improve or modify an easement for other than the traditional use, such as building a road on an easement that has traditionally been used for a snowmachine route or off-road vehicle trail, 11 AAC 51.200 proposes that DNR will ask for public comment on the application. If the easement is unsurveyed and crosses someone else's land, DNR will require a survey and give notice to that landowner as well.

Size guidelines for waterways that need easements. See the proposed 11 AAC 51.035 on size guidelines for a stream or lake to qualify as "navigable" or "public" waters needing an access easement under AS 38.05.127. These guidelines are based on an out-of-court settlement between DNR and the Matanuska-Susitna Borough.

How to Read the Proposed Regulations. As you review the draft regulations, you will notice some wording that is underlined. This underlining indicates new wording that the department proposes to add to an existing regulation. Wording proposed to be repealed or deleted is bracketed and shown in capital letters [AS IN THIS EXAMPLE]. If part of the regulation has no underlining or capitalization, this means that no change is being proposed to that wording. However, if the entire regulation is new, it is identified as new in a lead-in line rather than being totally underlined.

How to Comment on the Proposed Changes. The Division of Mining, Land and Water is asking for your comments on these proposed regulations by **4:30 PM on Friday, March 3, 2000**. Comments must be in writing, and they may be mailed, faxed, or e-mailed to the address below. If you have any questions about the regulations, please call Nancy Welch, Northern Regional Land Manager at the phone number below.

Division of Mining, Land and Water
3700 Airport Way
Fairbanks, Alaska 99709
Tele: (907) 451-2740
Fax: (907) 451-2751
E-mail: rs2477@dnr.state.ak.us